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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/555,921	11/04/2005	Frederick Leslie Brown	CUNANT 1716US	4319
20210 7590 08/04/2009 DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			EXAMINER WILLIAMS, MAURICE L	
			ART UNIT 3611	PAPER NUMBER
			MAIL DATE 08/04/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/555,921	<b>Applicant(s)</b> BROWN, FREDERICK LESLIE	
	<b>Examiner</b> MAURICE WILLIAMS	<b>Art Unit</b> 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-16 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-16 and 20-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 13 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims have been amended to include 'undrivable' rear ground engaging wheels; however, this element is not fully supported by the specification. Additionally, the wheels are considered to be drivable, as a motor or another drive means could easily be attached to each wheel.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13-16, 20 and 22-27 are rejected under 35 U.S.C. 102(e) as anticipated

by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Callan et al. (US

2003/0132038). Callan discloses:

fork lift truck (Fig. 4) comprising:

a truck body (11),

a lift mechanism (12) connected to the truck body by means of a vertically extending pivot (18) and means (17) for turning the lift mechanism relative to the truck body about said pivot,

a pair of undriven rear ground engaging wheels (24, 26; ¶ 0028, ln. 10-14 state that the wheels may be undriven) mounted on transverse axes,

the lifting mechanism having a single ground engaging front wheel (23) mounted centrally on a transverse axis, wherein a sole drive means is only connected to the front wheel (¶ 0010, ln. 7-9: when the rear wheels are not driven, the drive means is only connected to the front wheel)

The lifting mechanism is pivoted at an angle of substantially 90 degrees (Fig. 3).

The front wheel is positioned forwardly of the pivot connection (Fig. 4) and positioned as far forward as possible towards the load bearing part of the lifting mechanism.

The driven wheel is driven by an electric or hydraulic motor (¶ 0022, ln. 6), connected to the wheel (¶ 0022, ln. 4-7)

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Power is provided to the motor by an internal combustion engine (§ 0018, ln. 13).

Callan also discloses an arm (Fig. 1 between front and rear portions) extending from the truck body (11) to pivot assembly (12), wherein the pivot assembly is coupled to a remote end of the arm (Fig. 1).

Callan also discloses a forklift only driven by a drive connectable to the front wheel (§ 0022, ln. 4-8 provides that separate motors may be disposed on the wheels. Therefore, when front wheel drive is engage, the single motor on the front wheel drives the vehicle.)

Alternatively, if there had been no mention of the rear wheels being possibly undriven, it would also have been obvious to a person having ordinary skill in the art to take away structure, rendering the elimination of a drive means to the rear wheels obvious.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Callan in view of Hagin et al (US 4,778,020). Callan discloses as discussed above, but does not directly disclose a gearbox. Hagin discloses a gearbox (3) connecting the motor to the wheels. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify Callan as taught by Hagin in order to provide a well-known means of power transfer between the motor and wheel (§ 0010 of Callan explains that the wheels can be driven by a differential unit).

### ***Response to Arguments***

7. Applicant's arguments filed 5/13/09 have been fully considered but they are not persuasive. As noted above, there is not support in the specification for undrivable rear

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wheels. The addition of this negative limitation was not sufficient to overcome the prior art.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MAURICE WILLIAMS** whose telephone number is (571)272-4263. The examiner can normally be reached on Monday - Friday, 8 a.m. - 5 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Maurice Williams/  
Examiner, Art Unit 3611

Maurice Williams  
Examiner  
Art Unit 3611

MLW  
July 21, 2009

/Lesley D. Morris/  
Supervisory Patent Examiner, Art Unit 3611